

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS**

Agenda # III.A.1.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to revise the annual air quality operation fees and air quality open burning fees.

List of Affected Rules: This request to initiate rulemaking would amend ARM 17.8.501, 17.8.505 and 17.8.514.

Affected Parties Summary: The proposed amendments to the annual air quality operation fees would affect all of the approximately 1,170 facilities in existence as of March 1, 2007, that either hold an air quality permit or that will be required to obtain an air quality permit pursuant to Title V of the Federal Clean Air Act, and the approximately 510 currently registered oil and gas well facilities. The proposed amendments to the open burning fees would affect all of the 12 major open burners in the state: the Montana Department of Natural Resources and Conservation (DNRC); the United States Forest Service (USFS); the United States Fish & Wildlife Service (USF&WS); the Bureau of Indian Affairs (BIA); the Montana/Dakotas Bureau of Land Management (BLM); the National Park Service (NPS); Stimson Lumber Company; RY-Timber, Inc.; Plum Creek Timber Company; Pyramid Mountain Lumber, Inc.; F.H. Stoltze Land & Lumber Company; Sun Mountain Lumber; and Wyoming Sawmills, Inc.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments.

Background: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Annual air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of fee carryover from the previous fiscal year. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

This rulemaking would set the air quality operation fees to be billed in calendar year 2007. Air quality fees billed in 2007 will fund the Department's activities in fiscal year 2008, and, for facilities other than portable facilities and oil and gas well facilities, would be based on emissions from calendar year 2006.

The legislative appropriation from fiscal year 2007 was \$2,996,826. The amount of the carryover from fiscal year 2006 was \$308,362. The total amount of pollutants reported for calendar year 2006 fees was 106,590 tons, and the per-ton component of the air quality operation fee was \$22.30.

The appropriation for fiscal year 2008 is \$3,858,519, an increase of \$861,693 from this fiscal year. The projected carryover from fiscal year 2007 is \$203,327. The total amount of pollutants reported for 2007 fees is 95,832 tons. Based upon the appropriation, the estimated carryover, the projected permit application fees, and the emission inventory, in order to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge to \$29.96. Therefore, the Department is requesting that the board amend ARM 17.8.505(5) by replacing the per-ton charge of \$22.30 with \$29.96.

In calendar year 2006, the total amount of fees assessed was \$2,665,639. The amount of fees that would be assessed to meet this fiscal year's budget would be \$3,541,368, for an increase of \$875,729. In calendar year 2007, fees would be assessed for 1,170 facilities.

The Department is requesting that the board amend ARM 17.8.501 to add a definition of "registered oil and gas well facility," because the term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.505 would institute a new method of fee assessment for these facilities.

The Department is requesting that the Board renumber current ARM 17.8.505(4)(a) and (b), and the subsequent sections to conform to current rule numbering style.

The Department is requesting that the Board amend ARM 17.8.505 to assess an annual flat fee of \$600 for registered oil and gas well facilities, rather than basing their fee on emissions of air pollutants, and to amend ARM 17.8.501 to add a definition of "registered oil and gas well facility."

The Department is requesting that the Board amend ARM 17.8.505 to raise the administrative fee 6% from \$470 to \$500. This increase is commensurate with the 6% increase in the Consumer Price Index (CCPI) since 2005, when the administrative fee was increased to \$470.

The Department is requesting that the Board amend ARM 17.8.505 to change the date used to determine which facilities have active permits or registrations, and therefore are required to pay an annual air quality permit fee, from January 1 to March 1. This change would allow owners or operators of facilities which are no longer operating or are no longer required to hold a Montana Air Quality permit additional time to request revocation of their permit or withdrawal of their registration.

The Department is requesting that the Board amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2008. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for

major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2006, the major open burners reported 4,826 tons of emissions, compared to 6,070 tons for calendar year 2005, or a decrease of 1,244 tons.

The operating budget for 12 major open burners in fiscal year 2008 is \$46,159, compared to a budget of \$42,955 for fiscal year 2007. The increase of \$3,204 in major open burning funding is due to increases of \$2,503 in personnel costs, \$678 in travel costs, \$230 in newspaper publication costs, and \$733 in indirect costs. A new cost of internet service for entering burner data into the Airshed Management System database is \$1,660. The cost of satellite communications for transmitting meteorological data has increased \$2,550. Certain budget decreases offset these increases. The costs of technical equipment and contract services decreased \$5,000 because fewer significant capital expenditures in satellite communications infrastructure and equipment are anticipated for this fiscal year. The annual meeting room expense of \$150 was eliminated because a member of the Montana/Idaho Airshed Group has agreed to provide the facility to the department free of charge. The Department is proposing that the Board increase the permit fees from \$16.47 per ton of particulate, \$4.12 per ton of oxides of nitrogen, and \$4.12 per ton of volatile organic compounds emitted to \$21.07, \$5.27, and \$5.27, respectively.

The cumulative amount of the fees would equal the budget of \$46,159. This amount would be distributed among the 12 major open burners.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment.